

March 12, 1976

SENATOR SCHMIT: Yes, I agree.

SENATOR NICHOL: Something like this covenant may not suffice for this, and you may want to think about this sometime.

PRESIDENT: Senator Schmit.

SENATOR SCHMIT: Mr. President, I would further comment to Senator Nichol's question. I believe that the covenant not to sue would of course open up the entire question of indetermination in so far as the amount of liability that might be involved in regard to the number of persons at that time perhaps to sign or not to sign. The indefiniteness of the entire issue would be the one most serious I believe. I think that the situation that I have described here is a relatively simple one, it is one which we can understand, but I think that most of all, we need to come back to the point that I made earlier. First of all physicians agree that those individuals guilty of malpractice should be held responsible. Secondly, we agree, that insurance is provided in every area for almost every kind of risk, that insurance must then be available to protect the resources, the professional earning capacity of the individual, or else he is not going to be able to practice medicine. Then, providing that those are desirable, and that the individual who goes to the doctor who may be a victim of malpractice, who may decide that he has been victimized, that he has to have some redress, and so, as a result of that he follows the procedure outlined in the various sections of this act and he does have an opportunity to recover. But, I have pointed out that the recovery in order to be one which can be insurable has to be limited because of the extreme, the extreme position in which we find ourselves if we do not limit the recovery and the time that is involved in the recovery. So, therefore, I believe that the notice provision, that I have provided whereby advance notice to the Director of Insurance and an unbiased third party is a desirable one. I believe that the requirement that the patient decide to opt out has to be....a decision.....that information must be conveyed to the doctor. I believe that that is very important. I believe that there is responsibility on the part of both persons, both the health care provider and the patient. Certainly, most of all, and most of all I am sure that we all agree that the time for anyone to make such a decision should not be, if at all avoidable, at the time when the patient needs health care the worst. I'm trying to avoid that by the process that I have described and that is why I believe that it is imperative that we amend the committee amendments.

PRESIDENT: We have some other lights on, but we would like to interrupt because of the necessity of getting a bill processed today which is the end of the filing days, I have....

CLERK: Read LB688 correctly enrolled.

PRESIDENT: While the Legislature is in session and capable of transacting business, I have and do hereby propose to sign LB688.